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AS TRUSTEE OF THE RAYMOND F. O'BRIEN  
REVOCABLE TRUST

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Attorneys for Defendants  
XPO CNW, INC. and XPO LOGISTICS, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER O'BRIEN as trustee of the  
Raymond F. O'Brien Revocable Trust,

PLAINTIFF,

v.

XPO CNW, INC., and XPO LOGISTICS  
INC.,

DEFENDANTS.

CASE NO. 4:16-cv-03869-JSW  
Filed: 5/27/16

**PLAINTIFF'S OBJECTIONS TO  
DEFENDANTS' WRITTEN  
DISCOVERY DESIGNATIONS;  
DEFENDANTS' RESPONSES  
THERE TO**

TRIAL DATE: 2/3/2020

TIME: 8:00 AM

DEPT.: Courtroom 5

HONORABLE JEFFREY S. WHITE

1 Plaintiff Christopher O'Brien as Trustee of the Raymond F. O'Brien Revocable Trust,  
2 objects to Defendants' use of the following written discovery (identified by Defendants in their  
3 December 27, 2019 Written Discovery Designation): Plaintiff's Responses to XPO CNW, Inc.  
4 Request for Admissions, Set One, Response Nos. 3, 5 & 7. The text of these responses is  
5 attached hereto as Exhibit 1.

6 Plaintiff objects to the use of these discovery responses on the grounds that the  
7 information set forth in such responses is not relevant to this matter and confusing, misleading  
8 and unfairly prejudicial to Plaintiffs. *See* F.R.E. 401-403. *See also* Plaintiff's Motion in Limine  
9 No. 2.

10 Defendants' Response:

11 As set forth in Plaintiff's Witness List, attached to the Joint [Proposed] Trial Order,  
12 Plaintiff Christopher O'Brien is being offered to testify concerning "Raymond O'Brien's career  
13 with and service to Con-Way." Plaintiff's inability to provide fulsome responses to Request for  
14 Admission, Nos. 3, 5, and 7, which concern Raymond O'Brien's basic compensation and  
15 retirement information while employed by or serving on the Board of Con-Way, is evidence of  
16 Plaintiff's lack of knowledge regarding his anticipated testimony. *See* Fed. R. Evid. 602 ("A  
17 witness may not testify to a matter unless evidence is introduced sufficient to support a finding  
18 that the witness has personal knowledge of the matter."). Moreover, if permitted to testify as to  
19 this topic, Defendants' ability to impeachment would be compromised without these  
20 designations.

21 Additionally, as more fulsomely set forth in Defendants' Opposition to Plaintiff's Motion  
22 in Limine No. 2, Raymond O'Brien's sources of income from Defendant XPO CNW, Inc. (Con-  
23 Way's successor) are relevant to Defendants' intent and knowledge elements to the remaining  
24 elder abuse and intentional interference with contract claims. For example, Devens considered  
25 that Raymond O'Brien was receiving retirement benefits in his analysis of whether CNW was  
26 contractually obligated to pay the \$6,000 invoiced by O'Brien Interests, Inc. Furthermore, being  
27 the emotional distress allegations were pursued after Raymond O'Brien's death, Defendants have  
28 limited available evidence to defend against these allegations. Thus, Defendants must be able to

1 present evidence of Raymond O'Brien's finances in order to evaluate the purported emotional  
2 value of the loss of \$6,000 to him.

3 DATED: December 29, 2019

BROWN, GEE & WENGER LLP

4 /s/ Katherine F. Wenger

5 KATHERINE F. WENGER

6 Attorneys for Christopher R. O'Brien as  
7 Trustee of the Raymond F. O'Brien  
8 Revocable Trust

9 DATED: December 30, 2019

Respectfully submitted,

10 SEYFARTH SHAW LLP

11 By: /s/ Chantelle C. Egan

12 Chantelle C. Egan

13 Attorneys for Defendants  
14 XPO Logistics, Inc. and XPO CNW, Inc.

15 **SIGNATURE ATTESTATION**

16 I hereby attest that all signatories listed above, on whose behalf this stipulation is  
17 submitted, concur in the filing's content and have authorized the filing.

18 DATED: December 30, 2019

19 /s/ Chantelle C. Egan

20 Chantelle C. Egan

21 Attorneys for Defendants  
22 XPO Logistics, Inc. and XPO CNW, Inc.

23 60928360v.1

# **EXHIBIT 1**

Duc.

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8  
9 ATTORNEYS FOR PLAINTIFF  
10 CHRISTOPHER O'BRIEN,  
11 AS TRUSTEE OF THE RAYMOND F. O'BRIEN  
12 FAMILY TRUST

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 CHRISTOPHER O'BRIEN,  
18 AS TRUSTEE OF THE RAYMOND F.  
19 O'BRIEN FAMILY TRUST

20 PLAINTIFF,

21 v.

22 XPO LOGISTICS WORLDWIDE, INC., a  
23 Delaware corporation;  
24 CON-WAY GLOBAL SOLUTIONS, INC.,  
25 a Delaware corporation;  
26 and DOES 1-20, inclusive,

27 DEFENDANTS.

CASE NO. 4:16-cv-03869-JCS  
Filed: 5/27/16

PLAINTIFF'S RESPONSE TO  
DEFENDANT XPO CNW, INC.'S  
REQUEST FOR ADMISSIONS, SET ONE

28 PROPOUNDING PARTY: Defendant XPO CNW, INC.

RESPONDING PARTY: Plaintiff CHRISTOPHER O'BRIEN,  
AS TRUSTEE OF THE RAYMOND F. O'BRIEN  
FAMILY TRUST

SET NO.: One

Pursuant to Code of Civil Procedure ("Code Civ. Proc.") § 2031.210 et. seq., Plaintiff  
Christopher O'Brien, as Trustee of the Raymond F. O'Brien Family Trust ("Responding

1 Party”) hereby provides these objections and response to REQUEST FOR ADMISISONS, Set  
2 One, propounded by Defendant XPO CNW, INC. (“Propounding Party”).

3  
4 REQUEST FOR ADMISSIONS NO: 1:

5 Please admit that from 1977 to 1988, and then again from 1990 to 1991 YOU served as  
6 Chief Executive Officer of CON-WAY.

7 RESPONSE TO REQUEST FOR ADMISSIONS NO: 1:

8 Responding Party objects to this request to the extent it seeks information which is  
9 equally available to Propounding Party. Responding Party also objects to the use of the terms  
10 “YOU” and “CON-WAY”, as defined, as rendering the request compound and unintelligible and  
11 also objects to the request as generally compound. Responding Party further objects to the term  
12 “served” as vague and ambiguous. Responding Party also objects to this request to the extent it  
13 seeks information that is not relevant to the claims or defenses of either party.

14  
15 Subject to and without waiving the foregoing objection, Plaintiff states that, based on the  
16 deposition testimony provided by Raymond O’Brien in this matter, he is informed and believes  
17 that from 1977 through April of 1988 and 1990-1991 XPO CNW, Inc. (formerly known as Con-  
18 Way, Inc. and before that Consolidated Freightways, Inc.), employed Raymond O’Brien as its  
19 Chief Executive officer. Otherwise, Responding Party states despite a good faith, reasonable  
20 inquiry, he does not have information sufficient to admit or deny the remainder of this request as  
21 written, and has no means of readily obtaining such information.

22  
23 REQUEST FOR ADMISSIONS NO: 2:

24 Please admit that from in 1988 you retired from your position as the Chief Executive  
25 Officer of CON-WAY.

RESPONSE TO REQUEST FOR ADMISSIONS NO: 2:

Plaintiff objects to this request as vague and ambiguous and in particular objects to the term "you" without defining that term. Responding Party further objects to the terms "retired" and "position" as vague and ambiguous. Responding Party also objects to the term "CON-WAY" as defined as rendering the request compound and unintelligible. Responding Party further objects to this request to the extent it seeks information which is equally available to Propounding Party. Responding Party also objects to this request to the extent it seeks information that is not relevant to the claims or defenses of either party.

Subject to and without waiving the foregoing, Responding Party states that he is informed and believes based on the testimony of Raymond O'Brien provided in this matter, that in April of 1988 Raymond O'Brien stopped serving as Chief Executive Officer of XPO CNW, Inc. (formerly known as Con-Way, Inc. and before that Consolidated Freightways, Inc.). Otherwise, despite a good faith, reasonable inquiry, Responding Party does not have information sufficient to admit or deny this request as written, and has no means of readily obtaining such information.

REQUEST FOR ADMISSIONS NO: 3:

Please admit that YOU received a yearly salary for each year you served as the Chief Executive Officer of CON-WAY.

RESPONSE TO REQUEST FOR ADMISSIONS NO: 3:

Plaintiff objects to this request as vague and ambiguous and in particular objects to the term "yearly salary". Responding Party also objects to the use of the term "YOU" and "CON-WAY", as defined, as rendering the request compound and unintelligible. Responding Party further objects to this request as seeking information that is not relevant to a claim or defense of any party. Responding Party also objects to this request to the extent it seeks information which

1 is equally available to Propounding Party. Responding Party further objects to this request to the  
2 extent it seeks Raymond O'Brien's personal financial information protected by Raymond  
3 O'Brien's right to privacy as set forth in Article I, Section I of the California Constitution.

4 Subject to and without waiving the foregoing objections, Responding Party states that he  
5 is unable to admit or deny this request based on its ambiguity and based on the fact that, despite a  
6 good faith, reasonable inquiry, he does not have knowledge of all of the details regarding of all  
7 of the compensation that Raymond O'Brien received when he was employed by XPO CNW, Inc.  
8 (formerly known as Con-Way, Inc. and before that Consolidated Freightways, Inc.) as its Chief  
9 Executive Officer, and has no means of readily obtaining such information.

10  
11 REQUEST FOR ADMISSIONS NO: 4:

12 Please admit that YOU sometimes received a performance-based bonus for serving as  
13 Chief Executive Officer of CON-WAY.

14  
15 RESPONSE TO REQUEST FOR ADMISSIONS NO: 4:

16 Responding Party objects to this request as vague and ambiguous and in particular  
17 objects to the term "performance-based bonus" as vague and ambiguous. Responding Party also  
18 objects to the use of the term "YOU" and "CON-WAY", as defined, as rendering the request  
19 compound and unintelligible. Responding Party further objects to this request as seeking  
20 information that is not relevant to any claim or defense in this matter. Responding Party further  
21 objects to this request to the extent it seeks information which is equally available to  
22 Propounding Party. Responding Party also objects to this request to the extent it seeks Raymond  
23 O'Brien's personal financial information protected by Raymond O'Brien's right to privacy as set  
24 forth in Article I, Section I of the California Constitution.

25  
26 Subject to and without waiving the foregoing objection, Responding Party states despite a  
27

1 good faith, reasonable inquiry, he does not have information sufficient to admit or deny this  
2 request, and has no means of readily obtaining such information.

3 REQUEST FOR ADMISSIONS NO: 5:

4 Please admit that you received RETIREMENT BENEFITS for your service as CON-  
5 WAY's employee.  
6

7 RESPONSE TO REQUEST FOR ADMISSIONS NO: 5:

8 Responding Party objects to this request as vague and ambiguous and in particular  
9 objects to the use of the word "you" without defining that term. Responding Party further  
10 objects to the use of the term "CON-WAY" as defined as rendering the request compound and  
11 unintelligible. Responding Party also objects to the term as "RETIREMENT BENEFITS" as  
12 vague and ambiguous and as rendering the request compound. Responding Party further objects  
13 to the term "service as a CON-WAY" employee as vague and ambiguous and as calling for a  
14 legal conclusion. Responding Party also objects to this request as seeking information that is not  
15 relevant to any of the parties claims or defenses Responding Party further objects to this request  
16 to the extent it seeks information which is equally available to Propounding Party. Responding  
17 Party also objects to this request to the extent it seeks Raymond O'Brien's personal financial  
18 information protected by Raymond O'Brien's right to privacy as set forth in Article I, Section I  
19 of the California Constitution.  
20

21  
22 Subject to and without waiving the foregoing objections, Responding Party states that  
23 based on the testimony of Raymond O'Brien during his deposition in this matter, at some time  
24 after April of 1988, Raymond O'Brien received payments from a pension plan from XPO CNW,  
25 Inc. (formerly known as Con-Way, Inc. and before that Consolidated Freightways, Inc.). In  
26 addition, Responding Party is also informed and believes based on the testimony of Raymond  
27

1 O'Brien in this matter, that after April of 1988, Raymond O'Brien received health care benefits  
2 paid for by XPO CNW, Inc. (formerly known as Con-Way, Inc. and before that Consolidated  
3 Freightways, Inc.). Otherwise, Responding states that he is unable to admit or deny the  
4 remainder of this request due both to the ambiguity of this request, and also due to the fact that,  
5 despite a good faith, reasonable inquiry, he does not have information sufficient to admit or deny  
6 this request, and has no means of readily obtaining such information.  
7

8 REQUEST FOR ADMISSIONS NO: 6:

9 Please admit that from 1966 to 1995 YOU served on the Board of Directors of CON-  
10 WAY.

11 RESPONSE TO REQUEST FOR ADMISSIONS NO: 6:

12 Responding Party objects to this request as vague and ambiguous. Responding Party also  
13 objects to the use of the terms "YOU" and "CON-WAY", as defined, as rendering the request  
14 compound and unintelligible. Responding Party also objects to the use of the phrase "served on  
15 the Board of Directors of CON-WAY" as vague and ambiguous. Responding Party further  
16 objects to this request to the extent it seeks information which is equally available to  
17 Propounding Party. Responding Party also objects to this request to the extent it seeks  
18 information that is not relevant to the claims or defenses of either party.  
19

20 Subject to and without waiving the foregoing objections, Responding Party states that he  
21 is informed and believes based on the testimony of Raymond O'Brien in his deposition in this  
22 matter, that from 1966 through 1995, Raymond O'Brien served on XPO CNW, Inc. (formerly  
23 known as Con-Way, Inc. and before that Consolidated Freightways, Inc.)'s board of directors. In  
24 addition, after 1995 Raymond O'Brien continued to serve as Chairman Emeritus of XPO CNW,  
25 Inc. (formerly known as Con-Way, Inc. and before that Consolidated Freightways, Inc.).  
26

1 Otherwise, Responding states that he is unable to admit or deny the remainder of this request due  
2 to the fact that, despite a good faith, reasonable inquiry, he does not have information sufficient  
3 to admit or deny this request, and has no means of readily obtaining such information.

4 REQUEST FOR ADMISSIONS NO: 7:

5 Please admit that after YOU received compensation from CON-WAY for serving on its  
6 Board of Directors, which compensation was separate from and in addition to any compensation  
7 provided pursuant to the alleged AGREEMENT or AGREEMENT AS MODIFIED.

8 RESPONSE TO REQUEST FOR ADMISSIONS NO: 7:

9 Responding Party objects to this request as vague, ambiguous and unintelligible as  
10 written. Responding further objects to this request as compound and disjunctive. Responding  
11 Party also objects to the use of the terms "YOU" and "CON-WAY", as defined, as rendering this  
12 request compound and unintelligible. Responding Party further objects to the use of the terms  
13 "separate", and "compensation" as vague and ambiguous. Responding Party also objects to this  
14 request as seeking information that is not relevant to any of the parties claims or defenses.  
15 Responding Party further objects to this request to the extent it seeks information which is  
16 equally available to Propounding Party. Responding Party also objects to this request to the  
17 extent it seeks Raymond O'Brien's personal financial information protected by Raymond  
18 O'Brien's right to privacy as set forth in Article I, Section I of the California Constitution.

19 Subject to and without waiving the foregoing, Responding Party states that due to the  
20 unintelligible nature of this request, and due to the fact that, despite a good faith, reasonable  
21 inquiry, he does not have, and has no means of readily obtaining information on all of the  
22 compensation and benefits provided to Raymond O'Brien, he is unable to respond to admit or  
23 deny this request.

1 Please admit that the Board of Directors of CON-WAY had the complete authority and  
2 ability to change the terms of the alleged AGREEMENT AS MODIFIED.

3 RESPONSE TO REQUEST FOR ADMISSIONS NO: 14:

4 Responding Party objects to this request as vague and ambiguous and to the extent it calls  
5 for a legal conclusion. Responding Party also objects to this request as compound. Responding  
6 Party further objects to the use of the term "CON-WAY" as defined as rendering this request  
7 vague, ambiguous, compound and unintelligible. Responding Party further objects to the phrase  
8 "complete authority and ability" as vague and ambiguous.

9  
10 Subject to and without waiving the foregoing objections, Responding Party denies that  
11 XPO CNW, Inc. (formerly known as Con-Way, Inc. and before that Consolidated Freightways,  
12 Inc.)'s Board of Directors or anyone else had the authority to change the terms of the  
13 AGREEMENT AS MODIFIED without Raymond O'Brien's consent.  
14

15 DATED: March 28, 2017

BROWN, GEE & WENGER LLP

16  
17   
18 KATHERINE F. WENGER

Attorneys for Plaintiff

19 Christopher O'Brien, as Trustee of the  
20 Raymond F. O'Brien Family trust  
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